

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

Source Search Technologies, LLC,

Plaintiff/Counterclaim
Defendant,

-against-

LendingTree, LLC, IAC/InterActiveCorp,
and ServiceMagic, Inc.,

Defendants/Counterclaim
Plaintiffs.

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ELECTRONICALLY FILED**

Civil Action No.
04-CV-4420 (DRD/ES)

**COMBINED RESPONSE TO
SST'S RULE 56 STATEMENT
AND LENDINGTREE'S
RULE 56 STATEMENT IN
SUPPORT OF ITS CROSS-
MOTION FOR SUMMARY
JUDGMENT OF
NONINFRINGEMENT**

Response to SST's Rule 56 Statement

1. The Lendingtree ("LT") system receives requests from consumers and returns to the consumers "real offers" Exs. B-F.

Response: Disputed. The LendingTree website explains that "[t]he offers from the LendingTree Lenders are initial, conditional offers" and that consumers must "contact each Lender directly for information on the terms and conditions of their offer." (Kaplan Decl., Ex. D at SST 012470, 012473.)

2. Upon receipt of the consumer's request, LT filters the application against criteria set up by various banks to select potential lenders.

Response: Disputed. After accessing the LendingTree website, the prospective borrower selects a type of loan, completes a Qualification Form

(“QF”), and submits the form to LendingTree. The QF is a web-based form that includes 4-5 pages of questions that vary depending on the type of loan selected. The information in the QF is used (along with the borrower’s credit score) to match the prospective borrower with potential lenders. (Hodson Decl. at ¶ 3.)

3. The LendingTree system does not send the consumer’s request to all lenders whose criteria constitute a match with the borrower’s qualifications, but instead, employs a network filter using a mathematical algorithm to distribute the consumer’s request to a subset of the matching lenders.

Response: Disputed. After receiving a QF, LendingTree uses the information from the QF (along with the borrower’s credit score) to match the prospective borrower with potential lenders. (Hodson Decl. at ¶ 3.) The determination of which lenders will be sent the QF is based on a number of factors. (*See* Kaplan Decl., Ex. U.) In some cases, the routing of the QF is based on capacity. In some cases, it is based on a randomization process that incorporates a predetermined number of lenders. Even in the latter case, however, the lenders to which the QF are not necessarily a “subset of the matching lenders.” (*See id.*)

4. Once a consumer receives his or her loan offers, there are three east [sic] steps to closing the loan: Contact the lenders, provide documentation, and complete the closing process.

Response: Disputed. LendingTree is not involved in the process of closing loans. (*See* Hodson Decl. at ¶ 8.) The LendingTree website explains that the process of closing a loan takes place outside of the LendingTree system and includes steps such as verification of information, completion of a full loan application, and negotiation of additional terms and conditions. For example, the LendingTree website explains:

“The offers from the LendingTree Lenders are initial, conditional offers based on the information you provided when you filled out your loan request. All lender offers are conditional based on verification of your information and completion of a full application. In addition, the Lender may have other conditions determined solely by the Lender. Accordingly, the Lender may change the terms of their offers as they learn more information. Please contact each Lender directly for information on the terms and conditions of their offer. It is also important to note that interest rates change daily, so call the Lenders as soon as possible.”

(Kaplan Decl., Ex. D at SST 012470, 012473. *See also* Baker Decl., Ex. A at 20.)

5. The LT system returns an “offer to make a loan” from each bank.

Response: Disputed. LendingTree does not return responses from “each bank.” Rather, LendingTree uses the information in the QF (along with the borrower’s credit score) to match the prospective borrower with potential lenders. Only the matched lenders return responses, if any. (Hodson Decl. at ¶¶ 2-7.) Moreover, in some instances, LendingTree does not return the responses. Rather, the lenders contact the borrowers directly. (*See id.*) Finally, the LendingTree website makes clear that “[t]he offers from the LendingTree Lenders are initial,

conditional offers,” not actual offers. (Kaplan Decl., Ex. D at SST 012470, 012473.)

6. To use the LT website, consumers must fill in a plethora of personal information, including name, loan amount, credit history, income, social security number, etc.

Response: Disputed. If applying for a loan, a borrower must complete QF, which is a web-based form that includes 4-5 pages of questions that vary depending on the type of loan selected. (Hodson Decl. at ¶ 3. *See also* Baker Decl., Ex. A at 3-11.)

7. For lenders to participate on the LT network, they must “Join the Lender Network” by filling out a detailed application.

Response: Disputed. Lenders must fill out an application as part of the process for becoming a lender on the LendingTree network. The application, however, is “not an agreement to conduct business.” (Baker Decl., Ex. A at 22.) Moreover, the application is only part of the process to approve a prospective lender. (*See id.* at 23.)

8. The banks to which the consumers request is routed are selected based upon the criteria previously input by the banks, the parameters of the loan applicant, and the network filtering algorithm employed by the LT network filter.

Response: Disputed. After receiving a QF, LendingTree uses the information from the QF (along with the borrower's credit score) to match the prospective borrower with potential lenders. (Hodson Decl. at ¶ 3.) The determination of which lenders will be sent the QF is based on a number of factors. (See Kaplan Decl., Ex. U.) In some cases, the routing of the QF is based on capacity. In some cases, it is based on a randomization process that incorporates a predetermined number of lenders. Even in the latter case, however, the lenders to which the QF are not necessarily a "subset of the matching lenders." (See *id.*)

Rule 56 Statement in Support of LendingTree's Cross-Motion for Summary Judgment of Noninfringement

Pursuant to Local Civil Rule 56.1, LendingTree, LLC ("LendingTree") states that there are no genuine issues of material fact as to the following:

1. The LendingTree website is not designed or structured to allow borrowers to finalize transactions. (Hodson Decl. at ¶ 8.)
2. The LendingTree website does not allow borrowers to verify the information in the QF. (Hodson Decl. at ¶ 8.)
3. The LendingTree website does not provide a means for borrowers and lenders to negotiate the terms of a loan. (Hodson Decl. at ¶ 8.)
4. LendingTree is not involved in the preparation or signing of closing papers. (Hodson Decl. at ¶ 8.)

5. Funds cannot be transferred from the lender to the borrower using the LendingTree website. (Hodson Decl. at ¶ 8.)

6. None of the steps necessary to consummate a loan transaction involve LendingTree, and therefore, must take place outside the computer network. (Hodson Decl. at ¶ 8.)

7. Prospective borrowers have access to all of the information on the LendingTree website as soon as they enter the website. (Hodson Decl. at ¶ 10.)

8. None of the information on the LendingTree website is restricted to “members only.” (Hodson Decl. at ¶ 10.)

9. There is no application process required to use the LendingTree website. (Hodson Decl. at ¶ 10.)

10. Prospective borrowers do not register as “users.” (Hodson Decl. at ¶ 10.)

11. Prospective borrowers do not set up usernames or passwords. (Hodson Decl. at ¶ 10.)

12. There is no web page that requires borrowers to “login” to the LendingTree website. (Hodson Decl. at ¶ 10.)

13. Prospective borrowers do not have a website account from which they are able to view or edit their personal information. (Hodson Decl. at ¶ 10.)

14. Prospective borrowers are not recognized by LendingTree upon subsequent visits to the website. (Hodson Decl. at ¶ 10.)

15. For the prospective borrower, each visit to the LendingTree website is a new experience. (Hodson Decl. at ¶ 10.)

16. A prospective borrower does not provide his email address as part of a membership application. (Hodson Decl. at ¶ 11.)

17. The email addresses of prospective borrowers are provided on the QF and used by LendingTree only to notify borrowers after receiving responses from potential lenders. (Hodson Decl. at ¶ 11.)

18. The QF is not an application for a loan. (Hodson Decl. at ¶ 12; Baker Decl., Ex. A at 16.)

19. The QF is not an application for membership that must be completed before a prospective borrower can have access to the LendingTree website. (Hodson Decl. at ¶ 12.)

20. The QF is a form that borrowers fill out as part of the pre-qualification and matching process. (Hodson Decl. at ¶ 12; Baker Decl., Ex. A. at 16)

21. The QF does not register a user as a member of the LendingTree website. (Hodson Decl. at ¶ 12.)

22. The QF does not enable LendingTree to recognize the online user as a returning customer. (Hodson Decl. at ¶ 12.)

23. The QF does not confer special benefits or privileges. (Hodson Decl. at ¶ 12.)

24. The LendingTree website does not allow prospective borrowers to access or modify previously entered information through a network account. (Hodson Decl. at ¶ 13.)

25. If a user clicks on the link “Already a Customer?,” he or she is presented with only two options – either “call a LendingTree loan specialist” or “select the product link above to begin a new online loan request.” (Hodson Decl. at ¶ 13; Baker Decl., Ex. A. at 12-14.)

26. The LendingTree website is not designed with individual accounts that borrowers can access through the Internet. (Hodson Decl. at ¶ 13.)

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